

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JOHN HALE,

Plaintiff,

vs

9:08-CV-612

JADOW RAO; J. IRELAND; MACK/s/REVELL;  
R. FURNIA; J. SILVER; JOHN DOE # 1;  
JOHN DOE # 2; JANE DOE # 1; JANE DOE # 2;  
JANE DOE # 3; and JANE DOE # 4,

Defendants.

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APPEARANCES:

OF COUNSEL:

JOHN HALE  
03-A-2533  
Plaintiff, pro se  
Wende Correctional Facility  
P.O. Box 1187  
Alden, NY 14004

HON. ANDREW M. CUOMO  
Attorney General of the  
State of New York  
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The Capitol  
Albany, New York 12224

RICHARD LOMBARDO, ESQ.  
Asst. Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Plaintiff, John Hale, brought this civil rights action in March 2008, pursuant to 42 U.S.C. § 1983. By Report-Recommendation dated September 29, 2009, the Honorable George H. Lowe, United States Magistrate Judge, recommended that defendants' motions to dismiss (Docket No. 27) be granted in part and denied in part as follows: (1) the motion to

dismiss should be granted to the extent that plaintiff asserts claims for money damages against defendants in their official capacities; and (2) the motion should be denied to the extent that defendants moved to dismiss plaintiff's Eighth Amendment claim against defendant Rao, and moved to dismiss the complaint against defendant Rao on the ground of qualified immunity. The Magistrate Judge further recommended that the motion to dismiss for failure to prosecute, or in the alternative for an order compelling plaintiff's responses (Docket No. 36), be denied. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of Magistrate Judge Lowe, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. 636(b)(1).

Accordingly, it is

ORDERED that

1. Defendants' motion to dismiss (Docket No. 27) is GRANTED IN PART and DENIED IN PART;

a. The motion to dismiss is GRANTED to the extent that plaintiff asserts claims for money damages against defendants in their official capacities; and

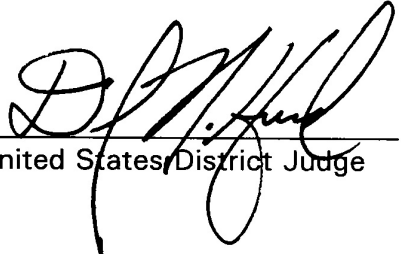
b. The motion is DENIED to the extent that defendants moved to against defendant Rao on the ground of qualified immunity;

2. Defendants' motion to dismiss for failure to prosecute, or in the alternative, for an order compelling plaintiff's responses (Docket No. 36) is DENIED;

3. This matter is referred back to the Magistrate Judge for any further proceedings.

IT IS SO ORDERED.

Dated: November 2, 2009  
Utica, New York.



United States District Judge